

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

REGN. NO. O.A. 774/88.

DATE OF DECISION: 18.12.91.

Prit Pal

... Applicant.

Versus

Delhi Administration
and Ors.

... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A).

For the Applicant.

... Shri B.S. Charya,
Counsel.

For the Respondents.

... None.

(Judgement of the Bench delivered by
Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The applicant joined as Lower Division Clerk on 12.2.1959. He was in due course promoted as Upper Division Clerk on 10.1.1967. The next promotional post in usual course which he could aspire was that of Head Clerk or Superintendent. But he came to be appointed to an ex-cadre post of Household Assistant on 20.9.1969 on his exercising option to do so, on a scale higher than ^{the one} which he was enjoying as a UDC. He went on making representations from time to time requesting the authorities to encadre the post held by him and to accord him all the consequential benefits. Ultimately, an order came to be made in his favour. On 18.6.1985 as per Annexure P-1 the post held by him was ^{the} encadred and he was appointed in/encadred post with effect from the date of the order. This did not satisfy the applicant.

He felt that he should be given seniority in the encadred post from the date on which he originally stood appointed in the ex-cadre post on 20.9.1969. In spite of many requests made by him, no relief has been granted as prayed for by him. Thereafter, he has come up with this Application.

The prayers in the Application are for his being placed in the Integrated Seniority List of Grade-II officers taking into consideration the date of his original appointment and to place him at the appropriate position in the seniority list. He further prays for consideration for promotion to Grade-I on the basis that he is deemed to have got promotion as Grade-II officer w.e.f. 20.9.1969.

The fixation of seniority is admittedly regulated by the statutory provision namely Rule 26 of the Delhi Administration Subordinate Services Rules 1980. The said provision requires the date of continuous officiation in the cadre to be taken into account in determining the seniority of the incumbents whose names are included in the seniority list of the particular cadre. The applicant having got into Grade-II cadre only on 18.6.1985, he could count his seniority from the said date of continuous officiation in the cadre. The relief which the applicant is claiming, is contrary to the Rule 26 regulating seniority, and as such he is not entitled to the said relief. Even otherwise, we are not inclined to interfere as fixation of the seniority of the applicant will affect the rights of the persons who are likely to be affected not having been impleaded as parties.

⑤


Learned counsel for the applicant submitted that he is entitled to go above nearly 300 persons in the seniority list of Grade-III officers, but none of them has been impleaded. Granting relief in the absence of impleadment of the officers, who are likely to be affected by such an order is opposed to the principles of natural justice, hence no relief in this behalf can be granted.

Consequently, it follows that the applicant cannot claim a direction for his case being considered for promotion from 20.9.1969, the date on which he got into Grade-II.

Learned counsel for the applicant, however, contended that there are several instances where the ex-cadre posts have been converted into cadre posts and the incumbents have been given the benefit of seniority from the dates they held the ex-cadre posts. We must at the outset, point out that any executive action, which is contrary to the statutory provision, cannot be made the basis for claiming relief invoking Article 14 of the Constitution. The respondents have also stated in the counter-affidavit that the applicant on his own option came to be appointed to the ex-cadre post of House-hold Assistant. The respondents pointed out that had the applicant continued to work as UDC, he would have

to wait for some years for getting the pay
scale which he has been enjoying for several years.
We have, therefore, no hesitation in holding that
this is not a fit case for interference . The
Original Application fails and is accordingly
dismissed.

There shall be no order as to costs.


(D.K. CHAKRAVORTY)
MEMBER


(V.S. MALIMATH)
CHAIRMAN

SRD